

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 12118 of 1996

Between:

P. Bommaiah, S/o P. Chinnakondappa,
R/o Sanapa (V), Atmakur (M),
Ananthapur District.

..... PETITIONER

AND

The Spl. Deputy Colector,
Land Acquisition Officer,
Tungabhadra Upper Channel,
Ananthapur, Ananthapur District.

.....RESPONDENT

* * *

ORDER:

Respondent acquired Ac.1-92 ½ cents in S.Nos.150/2 and 150/3 of Sanapa village belonging to the petitioner under the provisions of Land Acquisition Act (the Act) and passed an award on 26.10.1995. Petitioner received the amount allegedly under protest on 26.10.1995 and sent a written application on 24.11.1995 seeking

reference to civil court under Section 18 of the Act. By the order impugned in this petition, the respondent informed the petitioner that inasmuch as he failed to register his protest at the time of receiving the amount on 26.10.1995, the matter cannot be referred to civil court under Section 18 of the Act.

2. The contention of the learned counsel for the petitioner is that since there is an oral protest by the petitioner at the time of receiving amount on 26.10.1995 and followed written protest on 24.11.1995, action of the respondent in not referring the case to civil court under Section 18 is unsustainable. He relied on **Kotipalli Chitti V. Special Deputy Collector, Land Acquisition for ONGC, Rajahmundry** in support of said contention.

3. The contention of the learned Assistant Government Pleader is that since there is no protest by the petitioner at the time of receiving compensation, it should be deemed that the petitioner received the amount without protest and so merely because he filed a written representation subsequently on 24.11.1995, respondent need not refer the case to civil court under Section 18 of the Act, by placing reliance on **Wardington Lyngdoh V. Collector, Mawkyrwat**.

4. I had occasion to consider the decision relied on by the Assistant Government Pleader in W.P.No.10236 of 1996 dated 02.11.2005 and held that mere failure to record protest at the time of receiving compensation would not debar the written claim from reference to civil court if made within the period of limitation. For the reasons mentioned in the above said judgment and in view of the ratio in Kotipalli Chitti case relied on by the petitioner, action of the respondent in refusing to refer to civil court is unsustainable.

5. Therefore, writ petition is allowed and rule nisi made absolute and respondent is directed to refer the case of the petitioner to civil court under Section 18 of the Act as expeditiously as possible. No costs.

C.Y.SOMAYAJULU, J.

Date: 10th November 2005.

